

CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2021-24392

1. Police Officer Desean Mullings, on or about October 9, 2020, at approximately 0849 hours, in the vicinity of 100 Church Street, provided a false official statement to CCRB in that he denied his police vehicle accelerated toward the Grand Army Plaza protest crowd after driving past the initial protest crowd.

P.G. 203-08
(*now encompassed by* A.G. 304-10)

FALSE OR MISLEADING
STATEMENTS

2. Police Officer Desean Mullings, on or about October 9, 2020, at approximately 0849 hours, in the vicinity of 100 Church Street, impeded an investigation conducted by CCRB by providing a false official statement in that he stated protestors threw multiple objects at his police vehicle, causing the glass in the rear window and/or windshield and/or passenger window to shatter.

P.G. 203-08
(*now encompassed by* A.G. 304-10)

FALSE OR MISLEADING
STATEMENTS

Disciplinary Case No. 2021-24390

1. Detective Junior Sesay, on or about May 30, 2020, at approximately 1940 hours, while assigned to the 70 Precinct and on duty, in the vicinity of Flatbush Avenue near Prospect Park Zoo, Kings County, abused his authority as a member of the New York City Police Department, in that he damaged an individual's property by using a police vehicle to strike the individual's bicycle without police necessity.

P.G. 203-10, Page 1, Paragraph 5
(*now encompassed by* A.G. 304-06, Pg. 1, Para. 1)

PUBLIC CONTACT
PROHIBITED CONDUCT

2. Detective Junior Sesay, on or about May 30, 2020, at approximately 1940 hours, while assigned to the 70 Precinct and on duty, in the vicinity of Flatbush Avenue near Prospect Park Zoo, Kings County, abused his authority as a member of the New York City Police Department, in that he threatened individuals with the use of force by accelerating his police vehicle towards a crowd of protestors without police necessity.

P.G. 203-10, Page 1, Paragraph 5
(*now encompassed by* A.G. 304-06, Pg. 1, Para. 1)

PUBLIC CONTACT
PROHIBITED CONDUCT

3. Detective Junior Sesay, on or about September 24, 2020, at approximately 1014 hours, while assigned to the 70 Precinct and on duty, in the vicinity of 100 Church Street, New York County, provided a false statement to CCRB in that he denied accelerating toward the Grand Army Plaza protest crowd after driving past the initial protest crowd.

P.G. 203-08

FALSE OR MISLEADING

(now encompassed by A.G. 304-10)

STATEMENTS

4. Detective Junior Sesay, on or about September 24, 2020, at approximately 1014 hours, while assigned to the 70 Precinct and on duty, in the vicinity of 100 Church Street, New York County, impeded an investigation conducted by CCRB by providing a false official statement in that he stated protestors threw multiple objects at his police vehicle causing the glass in the rear windows and/or windshield to shatter.

P.G. 203-08

(now encompassed by A.G. 304-10)

FALSE OR MISLEADING
STATEMENTS

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on September 27, 2023. Respondents Mullings and Sesay, through their counsel, entered pleas of Not Guilty to the charged misconduct. The Civilian Complaint Review Board entered videos and CCRB interview audio and transcripts into evidence. Respondents testified on their behalves. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, the Tribunal finds Respondents Sesay and Mullings Not Guilty of all specifications and charges.

ANALYSIS

The following is a summary of the relevant evidence presented at trial.

On May 30, 2020, large crowds took to the streets of New York City to protest the murder of George Floyd at the hands of a Minneapolis police officer. On that day, Respondents Sesay and Mullings were assigned to the 70 Precinct and were scheduled to work a day tour starting at 0800 hours. Respondent Mullings' sergeant directed him to pick up two civilian arrestees from the 67 Precinct and transport them to One Police Plaza for arrest processing (T. 207). Respondent Mullings and Respondent Sesay then proceeded to the 67 Precinct in Sesay's

RMP. After picking up the civilian arrestees, Respondent Sesay made their way to Flatbush Avenue, where they encountered a crowd of people on the street (T. 68).

The crowd, which blocked both lanes of traffic, eventually permitted one SUV past their barricade; they returned the barricades, including metal barriers from the sidewalk and orange cones, back in front of Respondents' RMP to prevent them from continuing their route north on Flatbush Avenue (T. 68, 208). Respondents activated the RMP's turret lights to the highest level, and then began honking the horn to make it clear to the crowd that it was a police vehicle (T. 72).

The crowd then surrounded the RMP on both sides and began throwing objects at it (T. 210). While Respondent Mullings could not identify precisely what was being thrown, he testified he could "hear like the banging on the side of the vehicle from the objects and from people trying to pull ... on the door handles of the vehicle ..." (T. 210). Respondent Sesay described that he could "see rage on their faces" and that he feared, not only for his life, but also for his partner's life and the lives of the two civilians they were transporting (T. 73). He called it a "life and death situation," stating that he thought he was going to be killed, believing the crowd would open the RMP, drag him out, and release the two arrestees (T. 76, 136). Respondent Sesay waited for an opening in the crowd, and then maneuvered forward as individuals began moving out of the way of the RMP, and continued down Flatbush Avenue.

Respondent Sesay testified that once they reached a point where it was safe to pull over, he realized "the rear windscreen [was] damaged and the side windows [were] blown up" (T. 75). He checked on the two arrestees in the back to make sure they were okay and asked whether they needed medical attention. Respondent Mullings testified when he got out of the RMP to check on the arrestees, he observed they were covered in "glass, bricks, and pieces of rock" (T. 214).

He cleaned out the RMP by sweeping whatever was on the backseat to the floor of the RMP. He explained that when he removed the arrestee sitting on the passenger side to clean off the seats, he was “visibly shaken” and told Respondent Mullings, “I thought I was going to die there” (T. 216).

Respondents then resumed their assignment to transport the arrestees to One Police Plaza but were stopped at the Brooklyn Bridge because protesters had blocked its roadways. They backed the RMP off the bridge approach, and then returned to the 70 Precinct before contacting the Legal Bureau to advise them on their next steps. Respondent Mullings issued the arrestees summonses at the precinct and released them from custody.

Respondent Mullings testified that while he was at 70 Precinct, he observed that the damage to the RMP included broken rear passenger windows on both sides, broken smaller rear windows on both sides of the vehicle, and a broken rear windshield (T. 219). He informed a supervisor that the RMP sustained damage between the time they departed from the precinct at Tilden and Bedford Avenues, continuing along Flatbush Avenue to Grand Army Plaza; he was told the precinct vehicle coordinator would make a report. Respondent Sesay took photographs of the damage to the vehicle on his cell phone (Resp. Exs. E, F, and G). Those photos depict the rear windshield of RMP 5146 as shattered, and the driver’s side rear passenger window appears to be missing.

The following is a summary of the relevant portion of CCRB Exhibit 1:

- 00:20-00:26: Protestors are walking in the middle of the street. Someone is stating, “Get out of his way,” as protestors are seen waving along an SVU that is trying to drive through. The protestors allow that vehicle to pass without issue, as an unidentified person says, “Oh, he’s not a cop.”
- 00:27-00:30: Protestors gather on the driver and passenger sides of Respondents’ RMP. An individual holds a metal barrier against the passenger side of the RMP. Several individuals pound on the vehicle and kick the doors. On the

driver's side of the RMP, an individual in a red shirt places his hands on the hood. There is an individual standing on the driver's side of the RMP holding a bicycle whose front wheel is turned toward the front of the RMP and in front of the RMP's left front wheel. An individual is placing a metal barricade on the hood of the vehicle. The vehicle drives forward and the protestors on the driver's side step back; there are no pedestrians directly in front of the RMP. As the RMP moves forward, it strikes the front wheel of the bicycle to the left of the driver.

00:31-00:34: An individual attempts to push a metal barricade in front of the RMP as it tries to drive away from the crowd of protestors. Several individuals throw water bottles at the RMP. As the RMP proceeds north on Flatbush Avenue, several protestors appear to chase it on foot while dragging metal barricades. The rear window of the RMP appears to be intact.

Both Respondents were interviewed by CCRB regarding this incident approximately four months later and are alleged to have made false statements during those interviews. It is not in dispute that neither Respondent was shown the contents of CCRB Exhibit 1 before CCRB investigators questioned them.

Respondent Sesay was interviewed on September 24, 2020. CCRB alleges that Respondent Sesay allegedly made a false statement when he denied accelerating toward the Grand Army Plaza protest crowd after driving past the initial group. At trial, CCRB drew the Tribunal's attention to the specific statements made by Respondent Sesay. In the interview, he stated, "Protestors were not in front of me. I'm maneuvering, avoiding every object and both whatever obstacles in my way to get away from the scene" (CCRB Ex. 3, p. 37). When asked by the investigator if he saw protestors in the street, he responded, "I don't know" (CCRB Ex. 3, p. 39). He also stated he did not recall running over any bicycles or any property (CCRB Ex. 3, p. 40).

Respondent Sesay is also charged with impeding an investigation by providing a false statement during his CCRB interview regarding the damage done to the RMP. He told the investigators, "And I backed up my RMP, and was able to maneuver, and leave the location

safely with – after all the, the destruction, the damage to the RMP” (CCRB Ex. 3, p. 10). He further told the investigators that once he could pull over at a safe location, he checked to see if Respondent Mullings and the two civilian arrestees in the back seat were okay. He stated, “They were my most precious concern because both passenger windows at the back of the RMP were completely destroyed and break [sic] down. So, I thought they needed medical attention.” (CCRB Ex. 3, p. 12). Respondent Sesay told the CCRB investigator the “rear passenger window on both sides behind the driver side, and the passenger side, and also the rear windshield of the RMP was destroyed, completely shattered” (CCRB Ex. 3, p. 19). He said the damage was caused by “metal barriers, orange cones, and bricks” (CCRB Ex. 3, p. 24)

At trial, Respondent Sesay explained that when he said there were no protestors in front of his car, he was not trying to suggest there were no protestors in the street (T. 114). He stated there were “hundreds of protestors on the street, on the public sidewalk,” and that he did not understand what the investigator meant by asking if they were in front of his car. He testified, “If there’s a protestor in front of my car, I would hit them. That’s what I’m explaining. There’s no protestors in front of my RMP” (T. 114).

Respondent Mullings was interviewed on October 9, 2020. During that interview, he told the investigator that on Flatbush Avenue, “[the protestors] surround the vehicle. They picked up barriers, rocks, cones and started throwing them at the vehicle, shattering all the windows except for the front driver and front passenger windows” (CCRB Ex. 5, p. 11). Respondent Mullings also explains in his CCRB interview that he recalled the “passenger’s side window was definitely broken at that point¹, because I could remember feeling the air blowing from the back towards the front” (CCRB Ex. 5, p. 24). When the CCRB investigator asked him when the damage

¹ Alluding to the events recorded in CCRB Exhibit 1.

occurred, he stated, “All from when we were started on Flatbush Avenue, all the way to Grand Army Plaza, objects were being thrown [at] the vehicle.” (CCRB Ex. 5, p. 25). He further explained that he had an independent recollection as to the RMP windows being broken while they proceeded down Flatbush Avenue, stating: “That I remember because I can hear the glass being shattered and the debris falling on the prisoners on the back, and them screaming about it” (CCRB Ex. 5, p. 26). Additionally, when asked how fast they were going on Flatbush Avenue, he responded: “That I don’t know, ‘cause I’m not, I’m not the one driving, but it definitely wasn’t going quickly, because we’re also trying not to hit anyone” (CCRB Ex. 5, p. 28). At trial, Respondent Mullings testified he was honest during his CCRB interview and stated that the “stretch of Flatbush Avenue is very long ... it felt like one continuous event” (T. 224).

Disciplinary Case No. 2021-24390: Respondent Sesay

Specification 2: Threat of the Use of Force

I find that CCRB has failed to meet its burden of proof by a preponderance of the relevant, credible evidence that Respondent Sesay threatened individuals with the use of force by accelerating his police vehicle towards a crowd of protestors without police necessity. Respondent Sesay testified that he could see the crowd of people on the street and that the SUV that was in front of his RMP was allowed to pass through the crowd (T. 68). He believed there were about “a hundred or more” protestors surrounding the RMP (T. 69). He testified that he thought he was “facing death,” and that he not only had the responsibility of his own life, but the lives of his partner and the two civilians in the back (T. 73). Respondent Sesay explained he “backed a little bit” and was able to maneuver through the metal barriers, the orange cone, and the obstacles “without hitting an object, hitting no individual,” and was able to continue down

Flatbush Avenue (T. 74). Based on CCRB Exhibit 1, the only objects the RMP makes contact with are those that were purposely pushed in front of it.

CCRB's theory of the case is that by merely driving and maneuvering through the crowd of protestors without hitting anyone, Respondent Sesay threatened the use of force without police necessity. This theory posits that the protestors occupying the street had a superior right to control the highway, despite the lawful obligation of Respondents to perform their police duties, which included safely transporting two arrestees in their custody. There is no precedent of which this Tribunal is aware that would support such a novel interpretation of the First Amendment right to assemble.

Any of the individuals blocking the street and obstructing vehicular traffic from proceeding was in violation of the disorderly conduct statute (P.L. § 240.20[5]). In addition, because the vehicle they were obstructing was a police car performing an official government function, they were also in violation of the obstructing governmental administration statute (P.L. § 195.05). Those individuals who damaged the RMP by breaking its windows with projectiles or using metal barriers to cause body damage were in violation of the criminal mischief statute (P.L. § 145.00).

While there is a historical antecedent of civil disobedience as a form of protest in this country, the situation Respondents confronted bore little relationship to that precedent. A civil disobedience demonstration is one in which the protestors knowingly violate a statute and subject themselves to arrest in order to draw attention to an issue.

In this case, Respondents' RMP was surrounded by numerous individuals who, not only blocked their progress, but also risked passenger safety by throwing objects at them. Based upon the totality of the evidence, and drawing all reasonable inferences therefrom, at some

undetermined point between the period captured on the video and Respondents' arrival in the area of Grand Army Plaza, objects were thrown against the RMP with sufficient force to shatter several of its windows. According to the credible testimony of Respondent Mullings, various individuals were also pulling at the door handles of the RMP, leading to the logical inference that they were attempting to access the passenger compartment of the vehicle.

While it would be speculative to divine the intentions of those attempting to gain access to the RMP, it is reasonable to infer that it was not for a benign purpose. There is no First Amendment right to physically damage police vehicles or engage in conduct that is physically threatening to its occupants. While the constitutional principle of freedom of expression is one Members of Service are sworn to protect, the First Amendment is not a shield against the commission of otherwise criminal conduct.

Respondent Sesay was faced with a multitude of factors to consider as he attempted to extricate himself and his passengers from what he could reasonably believe was a chaotic, potentially dangerous scene. The protestors allowed civilian vehicles to drive through the crowds but specifically targeted Respondents' RMP and attempted to block its progress without legal justification. Respondents were responsible for the safety of the two arrestees in the back seat of the RMP, which would have taken priority over their own physical safety. Finally, the observations made by Respondents in that moment strongly suggested that various members of the crowd were not merely expressing their views on a matter of public interest but were attempting to invade the safety of the RMP.

In the view of the Tribunal, these factors, considered taken together, constitute police necessity. Both Respondents had a lawful duty at that point to make their best efforts to extricate themselves from the crowd for the safety of the two arrestees in their custody, all while avoiding

causing any harm to their provocateurs. There is no evidence in the record that showed people directly in front of Respondents' RMP as it began moving. There is also no evidence that anyone was injured or pushed back from the RMP.

The evidence does not support CCRB's characterization of the RMP's forward movement "lurch[ing] forward" into the protestors; instead, it shows Respondent Sesay displaying forbearance in waiting until he perceived an opening in the crowd that would permit him to move forward and avoid striking any pedestrians². The video evidence does show that the protestors on either side of the RMP eventually made the logical decision to put distance between themselves and a moving police vehicle, operating on the roadway where it had a right to be, with its turret lights flashing, to give notice to those pedestrians and avoid injury.

Accordingly, I find Respondent Sesay Not Guilty of Specification 2.

Specification 1: Abuse of Authority; Damage to Property

I find that CCRB has failed to meet its burden of proof by a preponderance of the relevant, credible evidence that Respondent abused his authority by damaging an individual's bicycle using his police vehicle to strike it without police necessity.

I incorporate by reference my findings regarding police necessity from the analysis under Specification 2, above.

When the CCRB investigator questioned Respondent Sesay, he stated that he did not recall hitting a bicycle or other property. CCRB Exhibit 1, however, does show Respondent's RMP making contact with the front wheel of a bicycle, as its owner holds it next to the driver's side of the RMP. Based upon Respondent Sesay's credible testimony, and all other relevant

² CCRB's reliance upon *Disciplinary Case No. 2022-25361* as authority in this case is mistaken. First, that case has no precedential authority, as the findings and penalty recommendations contained therein were disapproved on November 21, 2023. Second, that case is distinguishable on its facts from the instant matter.

facts in the record, I find that any contact he made with that bicycle was incidental to his attempt to escape a potentially dangerous situation. Moreover, CCRB did not offer any evidence, either testimonial or documentary, to support their claim that the bicycle was damaged.

Based upon the foregoing, I find Respondent Sesay Not Guilty of Specification 1.

Specification 3: False Statement

I find that CCRB has failed to meet its burden of proof by a preponderance of the relevant, credible evidence that Respondent Sesay provided a false statement to CCRB when he denied accelerating toward the Grand Army Plaza protest crowd after driving past the initial protest crowd.

I have examined the statements Respondent Sesay made during his CCRB interview on September 24, 2020, as well as his in-court testimony on September 27, 2023. I note that I had the opportunity to assess his demeanor on the witness stand during the trial.

Based upon the totality of the evidence, I find that Respondent Sesay's denial that he accelerated toward the crowd, made during his interview and affirmed at trial, was intended to convey that he did not accelerate toward the crowd with the intent of hitting anyone or subjecting them to a risk that they would be struck. I find that CCRB's theory of liability rests upon a hyper-technical interpretation of the word accelerate.

Anyone who watches the recording in CCRB Exhibit 1 and has a rudimentary understanding of the laws of physics would concede that in order for Respondent Sesay's RMP to proceed from a position of rest to moving forward would require acceleration. That connotation is not, however, the common usage of the word in spoken English.

Respondent Sesay insisted under vigorous cross-examination that he did not "accelerate" "toward the crowd" and that no one was in front of his RMP. This assertion at first blush

appears to be in conflict with CCRB Exhibit 1, which does depict pedestrians, at various points, stepping in front of his RMP. After asserting several times that no one was in front of his RMP, the Tribunal asked him for clarification. It was then that he explained that when he testified that no one was in front of his RMP, he meant at the time he was driving forward, as evidenced by the undisputed fact that he did not hit any pedestrians.

This explanation appears to be logical and corroborated by CCRB's video evidence. Based upon my assessment of Respondent Sesay's demeanor as a witness, I find his explanation plausible and logical.

Based upon the foregoing, I find Respondent Sesay Not Guilty of Specification 3.

Disciplinary Case No. 2021-24392: Respondent Mullings

Specification 1: False Statement

I find that CCRB has failed to meet its burden of proof by a preponderance of the relevant, credible evidence that Respondent Mullings provided a false statement to CCRB when he denied the police vehicle accelerated toward the Grand Army Plaza protest crowd after driving past the initial protest crowd.

I incorporate by reference my findings from the analysis of Specification 3 of Disciplinary Case No. 2021-24390, above.

CCRB has based these false statement charges on a 44-second video clip comprising CCRB Exhibit 1. When Respondent Mullings was asked about this video during his interview, he stated, "I'm not sure how long, like where exactly that video was being taken from how far down" (CCRB Ex. 5, p. 23). The credible evidence in the record established that the video does not depict the entirety of the events Respondents Sesay and Mullings experienced from the

moment they turned onto Flatbush Avenue until they could safely pull over and check on the occupants and the vehicle.

During Respondent Mullings interview, he asserted that he did not know how fast the RMP drove along Flatbush Avenue, but he was sure that it was not proceeding quickly. Based upon my examination of CCRB Exhibit 1, I find that the apparent speed of Respondents' RMP as it is depicted in the video was neither excessive nor reckless. I further find that the movement of the RMP was calculated to proceed up Flatbush Avenue away from the crowd of protestors without injuring any individuals who were temporarily in the roadway.

I further find that based upon the entirety of the record, Respondent Mullings' assertions during his interview of when the RMP sustained damage to its windows were not knowingly false at the time he made them. I credit his testimony as logical and candid. He testified at trial that he could not be certain exactly when the vehicle sustained the damage to its windows because the RMP's transit up Flatbush Avenue appeared to him to be one continuous event.

While CCRB Exhibit 1 does not show any evidence of windows shattering, it also does not preclude the possibility that the RMP did sustain damage to windows on the passenger side of the vehicle as Respondent Mullings stated in his interview. As Respondents' RMP drives away from the crowd, only the driver's side and eventually the rear windshield are depicted.

Moreover, CCRB has not demonstrated that if the statements, for the sake of argument, were indeed false, that they were also material. The overwhelming weight of the evidence established that the RMP sustained damage to its rear windows and rear windshield by the time Respondents escaped the crowds on Flatbush Avenue and stopped near Grand Army Plaza to check on their arrestees. Respondent Mullings' credible testimony, corroborated by Respondent Sesay's testimony on the same issue, established that when he emerged from the RMP, he saw

that the rear windows and the rear windshield were broken or shattered; he further noted that he had to clear broken glass from the arrestees as well as the back seat. Mullings testified further that from his perspective, there was a barrage of objects thrown at the RMP as he and Sesay drove down Flatbush Avenue.

Under these circumstances, any assertions regarding the timing of the damage to the RMP's windows are not false statements meant to deceive.

Based upon the foregoing, I find Respondent Mullings Not Guilty of Specification 1.

Disciplinary Case No. 2021-24390, Specification 4: Respondent Sesay
Disciplinary Case No. 2021-24392, Specification 2: Respondent Mullings

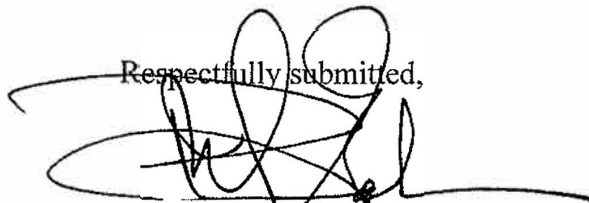
Impeding an Investigation

I find that CCRB has failed to meet its burden of proof by a preponderance of the relevant, credible evidence that Respondents Sesay and Mullings impeded an investigation conducted by CCRB by providing false statements that protestors threw multiple objects at their police vehicle causing the glass in the rear windows and/or windshield to shatter.

I incorporate by reference my findings from the analysis of Specification 3 of Disciplinary Case No. 2021-24390 and Specification 1 of Disciplinary Case No. 2021-24392, above. Because I found both Respondents Not Guilty of making false statements, the specifications charging them with impeding an investigation based upon the making of those allegedly false statements must also fall for lack of proof of an essential element.

Based upon the foregoing, I find Respondent Sesay Not Guilty of Specification 4 in Disciplinary Case No. 2021-24390. I further find Respondent Mullings Not Guilty of Specification 2 in Disciplinary Case No. 2021-24392.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Paul M. Gamble, Sr.', written over the text 'Respectfully submitted,'.

Paul M. Gamble, Sr.
Assistant Deputy Commissioner Trials

APPROVED

FEB 27 2024

EDWARD A. CABAN
POLICE COMMISSIONER